IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Appeal From Order No. 24 of 2007

Suresh Chandra ... Appellant

Vs

Ganga Ram & another ... Respondents

Sri Pooran Singh Rawat, learned counsel for the appellant
Sri P.C. Maulekhi, learned counsel for the respondent No. 2

Hon'ble B.C. Kandpal, J.

This appeal under Section 30 of the Workmen's Compensation Act, 1923 has been filed by the claimant/appellant against the judgment and order dated 10.11.2006 passed by the learned Workmen Compensation Commissioner/Deputy Labour Commissioner, Haldwani, District Nainital in W.C.A. No. 38 of 2004 whereby the learned Commissioner awarded a sum of Rs. 2,00,226/- in favour of the claimant/appellant.

2. Brief facts of the case are that the appellant – Suresh Chandra working as a driver in Tata Qualis No. UA04/0916 under the ownership of respondent No. 1 – Ganga Ram. On 05.09.2002, he was coming from Lucknow to Haldwani, when he reached near Sajahanpur, another vehicle coming from the opposite direction hit the said vehicle, due to which he sustained serious injuries in his left leg. According to the appellant/claimant he was 34 years of age and used to earn Rs. 3,000/- per month as salary and Rs. 50/- per day for food allowance. Therefore, he filed the claim petition under the Workmen's Compensation Act for a sum of Rs. 4,78,560/- as compensation.

3. Thereafter notices were issued to the opposite parties. Opposite party No. 1 – Ganga Ram, owner of the

vehicle in question filed written statement on 08.09.2004 admitting the factum of accident and stated that the Insurance Company was liable to pay compensation, if any. He has further alleged that he informed the Insurance Company about the accident, therefore, it was the responsibility of the Insurance Company to make enquiry and pay the compensation to the claimants, but the Insurance Company could not pay the compensation to the claimants. The claimant was entitled to get to compensation from the Insurance Company.

4. The New India Assurance Company Ltd. also filed the written statement stating therein that the vehicle in question was not insured with the Company and the owner of the vehicle was not possessing the valid papers/documents, therefore, the Insurance Company was not liable to pay any compensation.

5. Thereafter both the parties led evidence in support of their case. In order to support his case, the claimant/appellant has produced certificate/receipt of Soban Singh Jeena Base Hospital, newspaper cutting, driving licence and disability certificate issued by Dr. S.K. Mishra. After hearing learned counsel for the parties and perusing the entire material available on record, the learned Workmen Compensation Commissioner awarded a sum of Rs.2,00,226/- in favour of the claimant vide judgment and award dated 10.11.2006.

6. Feeling aggrieved by the aforesaid judgment and award, the claimant/appellant preferred this appeal before this Court for enhancing the amount of compensation.

7. Heard Sri Pooran Singh Rawat, learned counsel for the appellant, Sri P.C. Maulekhi, learned counsel for the respondent No. 2 and perused the record.

8. Learned counsel for the appellant/claimant has pressed this appeal only on the point of quantum. He has stated that the appellant was getting Rs. 3,000/- per month as salary whereas the learned Workmen Compensation Commissioner in order to calculate the amount of compensation has considered Rs. 2,827/- as minimum wages. The learned Workmen Compensation Commissioner did not consider this aspect that the claimant became disabled upto 40% which amounts to 100% disability and he is unable to do his work properly.

9. Learned counsel for the Insurance Company has submitted before the Court that the amount awarded by the learned Workmen Compensation Commissioner is perfectly justified. The learned Commissioner after going through the entire record, awarded the amount of compensation, which does not require any interference.

10. After hearing learned counsel for the parties and perusing the entire material available on record, I am of the view that the learned Workmen Compensation Commissioner has passed the impugned award, after considering the entire documents adduced by the parties and has awarded the amount of compensation as per rule framed in Workmen's Compensation Act. The documents pertaining to the disability shows that the claimant/appellant sustained 40% disability. Further the claimant/appellant as well as employer could not produce any documentary evidence, which may indicate the actual income of the claimant/appellant. Therefore, the

learned Compensation Commissioner has rightly taken into account minimum wages of Rs. 2,827/- prevalent at the relevant period and awarded a sum of Rs. 1,35,288/- as per rule. The learned Commissioner further awarded a sum of Rs. 64,938/- as interest @ 12% per annum, as applicable in the Workmen's Compensation Act. Thus, in total, the learned Workmen Compensation Commissioner awarded a sum of Rs. 2,00,226/- as compensation. The amount awarded by the learned Workmen Compensation Commissioner is perfectly justified. I am in total agreement with the finding recorded by the learned Workmen Compensation Commissioner in this regard. I do not find any force in the present appeal. The appeal lacks merit and is liable to be dismissed.

11. Accordingly, the appeal is dismissed. No order as to costs.

(B.C. Kandpal, J.)

26.11.2008
ASWAL